

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>WALLACE BUSTAD AND WALLACE BUSTAD CRANE SERVICE, INC., A Minnesota Corporation</b>	NO. 2008-AQ-18

TO: Wallace Bustad  
Wallace Bustad Crane Service, Inc.  
1206 12<sup>th</sup> Drive Southwest  
Austin, Minnesota 55912

**I. SUMMARY**

This administrative consent order is entered into between Wallace Bustad and Wallace Bustad Crane Service, Inc. and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a demolition project at DeBruce Grain in Joice, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Eric Wiklund, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

The DNR has jurisdiction to issue this administrative consent order, pursuant to the provisions of Iowa Code sections 455B.134 (9) and 455B.138 (1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: WALLACE BUSTAD AND WALLACE BUSTAD CRANE SERVICE,  
INC.

of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10.

**III. STATEMENT OF FACTS**

1. Wallace Bustad owns and operates Wallace Bustad Crane Service, Inc., a Minnesota corporation. DeBruce Grain hired Wallace Bustad and his company to demolish a grain elevator at the DeBruce Grain facility in Joice, Iowa.

2. On September 5, 2007, Eric Wiklund and Jeremy Klatt, environmental specialists at DNR Field Office 2, observed Wallace Bustad tearing down a building at the DeBruce facility in Joice. The DNR representatives spoke with Brian Lary, DeBruce employee, and Wallace Bustad. The demolition was about half-way done when the DNR representatives arrived. It is determined that an asbestos NESIAP inspection was not performed prior to the start of demolition and that an asbestos NESHAP notification for the demolition was not submitted to the DNR prior to the start of demolition. Mr. Lary and Mr. Bustad claimed to be unaware of the asbestos regulations. Mr. Bustad was told to stop the demolition and have the remaining portions of the building tested for asbestos.

3. Following the inspection, DNR Field Office 2 determined that Mr. Bustad had previous enforcement actions against him for violations of the asbestos regulations. DNR Field Office 2 contacted the Minnesota Pollution Control Agency (MPCA) and was informed that Mr. Bustad and his company were the subject of two enforcement actions concerning asbestos violations. In 1995, MPCA and Mr. Bustad entered into a Stipulated Agreement concerning Mr. Bustad's failure to notify of a demolition, failure to remove all asbestos containing material prior to demolition, and failure to keep all asbestos containing material adequately wet until disposed of. The Stipulated Agreement included a monetary penalty as well as a requirement for Mr. Bustad to attend an Environmental Protection Agency asbestos inspector class. In 2005, an Administrative Order with Penalty was issued to Mr. Bustad and his company for burying burned asbestos containing material rather than properly disposing of it.

4. The DeBruce building was tested for asbestos and portions of the building contained asbestos. The asbestos containing material was removed and the demolition continued.

5. On September 7, 2007, the DNR issued a Notice of Violation letter to Wallace Bustad for the failure to inspect for asbestos prior to demolition and failure to submit a notification prior to demolition. A Notice of Violation letter with the same violation was sent to DeBruce Grain.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
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INC.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. DNR Field Office 2 determined that there had not been an asbestos inspection prior to the demolition of the grain elevator at the DeBruce facility. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. The facts in this case indicate that the notification was not submitted prior to beginning demolition. The above facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Wallace Bustad and Wallace Bustad Crane Service, Inc. agree to do the following:

1. Wallace Bustad and Wallace Bustad Crane Service, Inc. shall comply with all asbestos NESHAP regulations for future renovations and demolitions; and
2. Wallace Bustad and Wallace Bustad Crane Service, Inc. shall pay a penalty of \$3,000.00 within 30 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
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INC.

may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$3,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for inspection prior to demolition may have allowed Mr. Bustad to save time and money. However, any economic benefit Mr. Bustad received was minimal because Mr. Bustad had to have the material tested following the demolition. Therefore no economic benefit is being assessed.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by the statute. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition of the structure. Failure to inspect and failure to notify threaten the integrity of the asbestos NESHAP program. Therefore, \$1,500.00 is assessed for this factor.

c. Culpability. Wallace Bustad has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. Additionally, Mr. Bustad misinformed the DNR when he stated he was unaware of the asbestos regulations. Mr. Bustad and his company have been the subject of two enforcement actions in the state of Minnesota for asbestos violations. Based on the above facts, \$1,500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

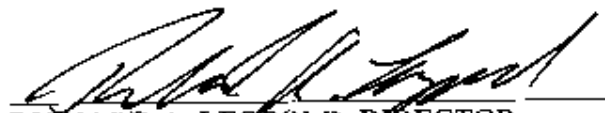
This administrative consent order is entered into knowingly by and with the consent of Wallace Bustad and Wallace Bustad Crane Service, Inc. For that reason, Wallace Bustad and Wallace Bustad Crane Service, Inc. waive the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE


Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
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order or referral to the Attorney General to obtain injunctive relief and civil penalties  
pursuant to Iowa Code section 455B. 191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 11 day of  
July, 2008

  
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WALLACE BUSTAD

Dated this 25<sup>th</sup> day of  
June, 2008

Barb Stock (No asbestos file number); Kelli Book; DNR Field Office 2; Marion  
Burnside; EPA; VII.C.4